

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

No. 06 CR 172-LTS-2

FNU LNU a/k/a CRUZ MANUEL RAMOS,

Defendant.

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ORDER

The Court has received and reviewed the letter from pro se Petitioner Mr. Cruz Manuel Ramos aka FNU LNU, dated February 14, 2022. (Docket entry no. 350.) Petitioner was resentedenced by this Court on January 26, 2021, to a total of 240 months of imprisonment and 8 years of supervised release, in connection with his convictions for Conspiracy to Commit Hobbs Act Robberies, Attempted Armed Robbery, Conspiracy to Distribute and Possess with Intent to Distribute Cocaine, and two counts of Possession with Intent to Distribute Heroin. (Docket entry no. 341.)

In his current letter, Petitioner states that he intends to file a compassionate release motion with this Court, but worries that he may be ineligible to file for compassionate release while his appeal is pending before the Second Circuit. Based on the information available on the Second Circuit's public electronic docket system, it appears that Petitioner filed a notice of appeal with the Second Circuit on February 3, 2021, and that the Government filed a cross-appeal on March 2, 2021. (See Notice of Criminal Appeal, United States v. Santamaria (LNU), No. 21-209 (2d Cir. Feb. 3, 2021), ECF no. 1; Notice of Criminal Appeal, United States v. Santamaria (LNU), No. 21-498 (2d Cir. Mar. 2, 2021), ECF no. 1.) Petitioner is represented

by counsel in this appeal. (Id. (no. 21-498), ECF no. 16.) On May 26, 2021, Petitioner’s counsel filed a Motion to Stay the appeal until such time that the U.S. Supreme Court issues a decision in United States v. Taylor, 20-1459—a case which is expected to be relevant to Petitioner’s appeal. (Id., ECF no. 17.) The Motion to Stay was granted by the Second Circuit on June 1, 2021, and there has been no docket activity since that time. (See id., ECF no. 21.)

Given this pending appeal, Petitioner has requested clarification as to his ability to file a motion for compassionate release. The Court notes that, under certain circumstances, Rule 37 of the Federal Rules of Criminal Procedure permits a district court to consider a defendant’s compassionate release motion, despite the existence of a pending appeal. See United States v. Genovese, No. 18CR183, 2020 WL 4004164, at *2 (S.D.N.Y. July 15, 2020) (noting that while a district court normally lacks authority to make “modification of judgments” while an appeal is pending, Rule 37 provides an exception to this principle for certain “types of motions,” including those “under 18 U.S.C. § 3582(c)”). Specifically, while an appeal is pending, Rule 37 permits a district court to “(1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.” Fed. R. Crim. P. 37(a). Thus, the Court may be permitted to consider a compassionate release motion should Petitioner file one.

Chambers will mail a copy of this Order to Petitioner.

SO ORDERED.

Dated: New York, New York
February 24, 2022

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

Copy to be mailed to:

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